

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 9  
RFC

2/6/01

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Hotline Sales Corp.

Serial No. 75/526,304

Howard Joseph for Hotline Sales Corp.

Bradley B. Bayat, Trademark Examining Attorney, Law Office  
114 (Margaret Le, Managing Attorney).

Before Cissel, Quinn and Hairston, Administrative Trademark  
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On July 27, 1998, the above-referenced application was filed to register the mark "TEMPTRESS" on the Principal Register for "clothing, specifically hosiery and lingerie," in Class 39. The basis for the application was applicant's claim that it had used the mark sought to be registered on these goods in interstate commerce since 1992.

The Examining Attorney refused registration under Section 2(d) of the Lanham Act on the ground that applicant's mark, "TEMPTRESS," as used in connection with



hosiery and lingerie, so resembles the identical mark "TEMPTRESS," which is registered<sup>1</sup> for "brassieres, garter belts, girdles, pantie girdles, and foundation garments," in Class 25, that confusion is likely. Applicant was also advised that the word "specifically" in the identification-of-goods clause in the application should be replaced with the word "namely," and that the proper classification for the goods specified in the application is Class 25.

Responsive to the first Office Action, applicant amended the classification and the identification-of-goods clause to conform to the Examining Attorney's suggestions. Applicant also argued that the Examining Attorney was "in error" in finding the cited registered mark to be a bar under Section 2(d) of the Lanham Act. Enclosed in support of applicant's argument was the affidavit of Don K. Whang, applicant's owner and president, who stated that applicant does not sell any of the products sold by the registrant under the registered mark, and that the registrant does not sell any of the products applicant sells under the mark sought to be registered. Mr. Whang also stated that "[a]ll of registrant's products are 'devices' for support of body

---

<sup>1</sup> Reg. No. 699,054 issued on the Principal Register to Munsingwear, Inc. on June 7, 1960. Combined affidavit under Sections 8 and 15; renewed.



parts, not clothing. All of applicant's products are clothing."

The Examining Attorney was not persuaded by applicant's response, and the refusal to register under Section 2(d) of the Act was made final in the second Office Action. Submitted in support of the refusal to register were copies of third-party trademark registrations, five of which are based on use in commerce, wherein hosiery and lingerie are listed along with garter belts and foundation garments such as brassieres and girdles. The Examining Attorney argued that these registrations show that it is common for businesses to use one mark in connection with the sale of both the products set forth in the application and the goods specified in the cited registration.

Applicant timely filed a Notice of Appeal. Both applicant and the Examining Attorney filed briefs, but applicant did not request an oral hearing before the Board.

The sole issue before us on appeal is whether confusion is likely. Based on careful consideration of the record in this application and the arguments presented by both applicant and the Examining Attorney, we find that the refusal to register is well taken.

In the case of *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), the predecessor to



our primary reviewing court set out the factors to be considered in determining whether confusion is likely. Chief among these factors are the similarity of the marks and the similarity of the goods.

In the instant case, notwithstanding applicant's arguments to the contrary, the marks are identical. Applicant argues in its brief that its mark is not similar to the registered mark because of the stylized presentation in which the word "TEMPTRESS" is presented on the specimens of use submitted with the application. As the Examining Attorney points out, however, in determining whether confusion is likely, the Board must compare the cited mark with the mark shown in the drawing submitted with the application. By submitting a typed drawing of the word "TEMPTRESS," applicant has not restricted its claim to the way the word is displayed in the specimens of record, but neither did registrant when it registered the same word in typed form.

Applicant's mark is identical to the registered mark, and in this situation, the relationship between the goods set forth in the application does not need to be as close in order to support a finding that confusion is likely as would be the case if the marks were not identical. *Amcor, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981).



Although these products are not identical, they do not have to be in order for confusion to be likely. The issue is not whether the products will be confused, but rather whether the use of similar marks on them will lead purchasers to assume mistakenly that they come from the same source. These goods are all clothing items which may be worn together by the same ordinary consumers who purchase them for complementary use through the same channels of trade. The third-party registration evidence made of record by the Examining Attorney demonstrates clearly that the goods specified in the application are closely related to those set forth in the registration. That particular businesses have registered their respective trademarks for all of these products gives the purchasing public reason to assume that the use of identical marks on both the goods set forth in the application and the goods listed in the cited registration is an indication that they all emanate from a single source. In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993); and In re Mucky Duck Co., 6 USPQ2d 1467 (TTAB 1988).



In summary, we find that the use of these identical marks on these closely related, complementary items of wearing apparel is likely to cause confusion.

Decision: The refusal to register under Section 2(d) of the Lanham Act is affirmed.



Ser No. 75/526,304